

EXHIBIT 3

5-3-06 Bailey testimony.txt
1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
4

5 UNITED STATES OF AMERICA,

6 vs.

CASE NO: 2:05cr119-F

7 DON EUGENE SIEGELMAN,
8 RICHARD M. SCRUSHY,
9 PAUL MICHAEL HAMRICK,
and GARY MACK ROBERTS,

10 Defendants.

11 * * * * *

12 EXCERPTS OF TRIAL PROCEEDINGS

13 * * * * *

14 TESTIMONY AND PROCEEDINGS before The

15 Honorable Mark E. Fuller, United States District
16 Judge, and a jury, at the United States Federal
17 Courthouse, One Church Street, Montgomery,
18 Alabama, reported by Dee Coker, Registered
19 Professional Reporter and Commissioner for the
20 State of Alabama, commencing on Wednesday, May 3,
21 2006, commencing at approximately 9:00 a.m.

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1 THE COURT: Good morning, ladies and
2 gentlemen. Is the United States
3 prepared to continue with the
4 direct examination of this witness?

5 MR. FEAGA: We are, Your Honor.

6 THE COURT: You may proceed.

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4 Q. Okay. And that happened in Governor
5 Siegelman's case?

6 A. Yes.

7 Q. There were many, many people working in
8 Governor Siegelman's campaign and they were
9 not paid a dime.

10 A. That's correct.

11 Q. And they --

12 A. To the best of my knowledge, that's correct.

13 Q. And they did it for a variety of reasons we
14 don't need to go into now; but in your
15 experience in campaign is that folks on both
16 sides, Alabama's Republicans and Democrats,
17 that all volunteer their time and their sole
18 primary motivation is for good government.
19 Is that fair?

20 A. I don't know what everybody's intentions are.

21 Q. Well, what was your intention in 1993?

22 A. To support Governor Siegelman.

23 Q. To support Governor Siegelman. Did you enter

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1 that campaign in 1993 with Governor Siegelman
2 with the specific intent to line your pocket?

3 A. No.

4 Q. Did you enter that agreement -- that campaign
5 in 1993 with the understanding that once you
6 got close to somebody with power, you would
7 be able to extort, bribe, or otherwise accept
8 loans in the amounts of hundreds of thousands
9 of dollars from some of the most successful
10 businessmen in Alabama?

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11 A. No.

12 Q. Okay. Well, let's get back to our questions
13 here. I'll put a question mark on that
14 \$19,000 as it has -- as it has to do with
15 Lanny Young's contribution to your salary
16 during the campaign, and we'll debate later
17 whether Governor Siegelman had any obligation
18 to do anything with that. But let's make
19 clear, not one red cent of that \$19,000 that
20 you got from Lanny Young in 1998 went to
21 Governor Siegelman?

22 A. Correct.

23 Q. And I apologize if I asked you this, but I

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1 want to make sure. You've already
2 established that you never told Governor
3 Siegelman that this \$55,000 in 1996 came from
4 Lanny Young. You never told him about that
5 transaction?

6 A. Correct.

7 Q. And not one red cent went to Governor
8 Siegelman from that \$55,000 that Lanny Young
9 gave you?

10 A. Correct.

11 Q. \$20,000 in the year 2000 from Lanny Young.
12 You never told Governor Siegelman that Lanny
13 Young gave you \$20,000?

14 A. Correct.

15 Q. And not one red cent went to Governor
16 Siegelman from that \$20,000?

17 A. Correct.

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18 Q. And we have this little thing over here on
19 the side. It's that \$100,000 because we all
20 agree, even though we can't itemize it
21 today -- you've pled to it and everybody
22 knows it -- that Lane young gave you, Nick
23 Bailey, well over \$100,000, right?

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1 A. Correct.

2 Q. And of that well over \$100,000 that Lanny
3 Young gave to Nick Bailey, you never told
4 Governor Siegelman about any of that money?

5 A. Governor Siegelman was aware of the \$19,000
6 for the '98 campaign. Other than that, you
7 are correct.

8 Q. And not one red cent of that over \$100,000
9 that Lanny Young gave to you went in Governor
10 Siegelman's pocket?

11 A. That's correct.

12 Q. Now -- I said it again. I'm sorry.

13 Anthony Fant. We've already established
14 you didn't pay any taxes on that money,
15 correct?

16 A. To the best my knowledge, no.

17 Q. Okay. You never told Governor Siegelman you
18 took \$50,000 from Anthony Fant while you were
19 in office being paid by the citizens of
20 Alabama?

21 A. That's correct.

22 Q. Not one red cent of that \$50,000 you took
23 from Anthony Fant ever went in Governor

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- 1 Siegelman's pocket?
- 2 A. That's correct.
- 3 Q. Our friend Curtis Kirsch, the architect, paid
- 4 you \$21,000. You never paid taxes on any of
- 5 that money?
- 6 A. To the best of my knowledge, no.
- 7 Q. You never told Governor Siegelman about any
- 8 of that money that went to you from Curtis
- 9 Kirsch?
- 10 A. That's correct.
- 11 Q. Governor Siegelman didn't get one red cent of
- 12 that \$21,000 you took from Curtis Kirsch.
- 13 A. That's correct.
- 14 Q. The \$17,000 in remodeling that you got done
- 15 on your house, the hard work of those
- 16 carpenters and plumbers and anybody else who
- 17 was in that house, you never paid taxes on
- 18 those services that were given to you?
- 19 A. That's correct.
- 20 Q. And there wasn't a lick of work that any of
- 21 those workmen did on anything owned by
- 22 Governor Siegelman?
- 23 A. That's correct.

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- 1 Q. You didn't send a plumber to fix a leaky
- 2 toilet in Governor Siegelman's house, did
- 3 you?
- 4 A. Not that I recall.
- 5 Q. He didn't benefit one bit from \$17,000 worth
- 6 of work from all these workmen working on

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7 your house?

8 A. That's correct.

9 Q. The \$1,000 that -- that we can agree on, at
10 least, that Curtis Kirsch paid on the
11 utilities at your house because you say you
12 couldn't afford to pay your utilities, not
13 one cent went to Governor Siegelman to pay
14 his own debts?

15 A. That's correct.

16 Q. The over one -- the \$1,000 that we agree on
17 that Curtis Kirsch paid on the mortgage on
18 your house, not one penny went to Governor
19 Siegelman?

20 A. That's correct.

21 Q. And you never told Governor Siegelman that
22 Curtis Kirsch was paying anything on your
23 house or covering any of your debts?

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1 A. That's correct.

2 Q. One more. And I hope I don't lose the jury.
3 Jim Lane, \$30,000. while you were
4 taking money as an employee from the citizens
5 of Alabama to do your job, you never told
6 Governor Siegelman that you took \$30,000 from
7 Jim Lane?

8 A. That's correct.

9 Q. And Governor Siegelman didn't get one red
10 cent of that \$30,000?

11 A. That's correct.

12 Q. \$20,000 from Jim Lane. You never told
13 Governor Siegelman you were getting 30 --

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14 \$20,000 from Jim Lane?

15 A. That's correct.

16 Q. And Governor Siegelman didn't get one cent of
17 that \$20,000?

18 A. That's correct.

19 Q. The second \$20,000 -- and I'm sorry for being
20 redundant, but let's be clear. While you
21 were a citizen taking money from the citizens
22 of Alabama and you took \$20,000 from Jim
23 Lane, you never told Governor Siegelman, hey,

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1 Gov, I've got \$20,000 from Jim Lane, did you?

2 A. Unless we're talking about the 20 for the
3 campaign work.

4 Q. Okay. Unless we're talking about the 1998 --

5 A. Other than that, you're absolutely correct.

6 Q. Well, let's assume we are. Well, how much of
7 that money that you got from Jim Lane went in
8 Governor Siegelman's pocket?

9 A. None.

10 Q. None. And you had a conspiracy with this man
11 to defraud the citizens of Alabama and line
12 your pockets?

13 MR. FEAGA: Your Honor, if I may
14 interpose an objection. The jury
15 is going to decide whether there
16 was a conspiracy. What he
17 testified to was he had an
18 agreement and an understanding.

19 THE COURT: Sustained.

20 MR. FEAGA: We object to the question.

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21 THE COURT: Sustained.

22 Q. Well, maybe I need some education. I often
23 do. Mr. Bailey, could you tell me and the

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1 members of the jury exactly what the
2 difference is between an absolute agreement
3 and a conspiracy?

4 MR. FEAGA: Your Honor, we object.

5 It's asking him to make a
6 conclusion of law and fact that
7 the jury is going to be making in
8 this case. And counsel knows
9 that's an improper question to be
10 asking of a lay witness.

11 MR. McDONALD: I'd like to respond

12 before you rule, Your Honor. The
13 jury is somehow going to have to
14 make some jump between his word
15 "agreement" and conspiracy. And
16 I've got to get straight what his
17 word "agreement" means, because
18 they've used that word "absolute"
19 and "very absolute agreement"
20 through their entire examination.
21 And I've got to know the
22 difference between agreement and
23 conspiracy so I know how to talk

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1 to these good folks on the jury so
2 they don't get confused.

3 THE COURT: Any further response?
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7 talked a little bit about your finances, but
8 let's get a full picture. In 1992 and 1993,
9 Mr. Bailey, you were already having financial
10 trouble.
11 A. You may have to refresh my memory.
12 Q. Okay. Do you know a gentleman by the name of
13 Larry Holt?
14 A. Yes.
15 Q. Who is he?
16 A. Loan officer at Regions Bank. First Alabama
17 Bank back then.
18 Q. First Alabama Bank. Then it became Regions
19 Bank, right?
20 A. That's correct.
21 Q. You had borrowed a substantial amount of
22 money from Regions Bank beginning in 1986
23 while you were probably still in high

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1 school.
2 A. That's correct.
3 Q. You had done some of your own investments?
4 A. Yes.
5 Q. By 1992 and 1993 when you were -- help me
6 with the math again. How old were you in '92
7 and '93?
8 A. You help me. I was born in '68.
9 Q. We were born at the same time, and I'm having
10 a tough time. Let's say 24.
11 A. Okay. That sounds --
12 Q. All right. You already had run up such a
13 debt with Mr. Holt's bank that you could not

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- 14 pay your interest-only payments, correct?
- 15 A. That sounds familiar.
- 16 Q. Okay. And let's explain to the jury, anybody
- 17 who's not poor like you and me, what
- 18 interest-only payments are. Okay?
- 19 Interest-only payments are you borrow some
- 20 money on a credit line or whatever to buy
- 21 anything. And the bank, rather than making
- 22 you pay principal and interest back, they
- 23 only charge you interest, correct?

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- 1 A. That's correct.
- 2 Q. So what you're trying to do is get the
- 3 payment as low as possible.
- 4 A. Yes.
- 5 Q. So even though you had secured loans that
- 6 were the lowest payment possible, just paying
- 7 the interest -- and you're only paying the
- 8 interest on quarterly installments, right?
- 9 A. That sounds right.
- 10 Q. That means four times a year, you had to come
- 11 up with enough money to just pay the interest
- 12 on the money that you had borrowed?
- 13 A. That sounds right.
- 14 Q. You couldn't make those payments?
- 15 A. I don't recall not making those payments,
- 16 Mr. McDonald, but that may be true.
- 17 Q. Okay. Well, do you recall Larry Holt calling
- 18 you daily?
- 19 A. No.
- 20 Q. Do you recall Larry Holt writing you letters?

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21 A. Yes.

22 Q. You do remember him writing you letters?

23 A. Yes.

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1 Q. Do you need to see them?

2 A. I don't need to see them. I'll just take
3 your word for that.

4 Q. All right. You'll take my word that Larry
5 Holt wrote you a bunch of letters saying pay
6 up.

7 A. Yeah.

8 Q. All right. One of the problems that you had
9 about this time, Mr. Bailey, with your
10 financial background is you think you had a
11 plan, aside from your day job, to make a
12 substantial amount of money in trading what
13 some folks might call high risk stock, right?

14 A. That's correct.

15 Q. What's the word?

16 A. Futures.

17 Q. Cattle futures?

18 A. Cattle.

19 Q. Before you were 25 years old, Mr. Bailey, you
20 had lost \$55,000 trading cattle futures?

21 A. At least.

22 Q. At least. You didn't have the money to pay
23 for it, so you put a mortgage on your own

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1 parents' house?

2 A. That's not correct. It was on a piece of
3 family property.

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- 4 Q. Okay. You put a mortgage on your family --
5 which was initiated by your parents --
6 property --
7 A. That's correct.
8 Q. -- to pay for debts that you had incurred in
9 cattle futures?
10 A. Cattle trading, that's correct.
11 Q. Okay. Now, I promise not to go through all
12 of them, but let's just agree there's a lot
13 of mortgages in Cullman County with Nick
14 Bailey's name on them. Can we agree on
15 that?
16 A. I traded a lot in real estate and cattle in
17 Cullman County.
18 Q. Yes.
19 A. Yeah.
20 Q. Okay. And you were mortgaging a great deal,
21 because you did some cattle trading, but you
22 did a lot of cattle future trading?
23 A. I traded a lot of cattle and a lot of

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- 1 houses. That's the reason you see a lot of
2 mortgages.
3 Q. Yes.
4 A. Those weren't necessarily all cattle.
5 Q. Okay. Now, in the bank statements that you
6 were submitting for loans, Mr. Bailey, you
7 were showing your income at the same time of
8 between 25 and \$50,000, correct, right around
9 this same time?
10 A. I'd have to see that to say absolutely

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21 And I want to make sure that we get them
22 covered.

23 MR. McDONALD: I can do it before we

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1 break for lunch, Your Honor. I
2 think we've got about ten minutes
3 if that's okay.

4 THE COURT: You may proceed.

5 Q. I would say the second most important part of
6 your job, besides being chauffeur, in '94 was
7 this. When Governor Siegelman would show up
8 for a campaign rally or some sort of a
9 meeting, there would be people lining up to
10 meet him, wouldn't there?

11 A. Usually, yes.

12 Q. He wasn't even lieutenant governor yet; but
13 he was a force, a political force in Alabama,
14 right?

15 A. Yes.

16 Q. He had already been the Attorney General,
17 right?

18 A. That's correct.

19 Q. He had already been the Secretary of State,
20 right?

21 A. Right.

22 Q. Throngs of people wanted to get to meet this
23 man, right?

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1 A. That's correct.

2 Q. So one of your jobs would be there would be
3 kind of like a receiving line at a wedding,

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1 staff?

2 A. He might take a recommendation, but he

3 wouldn't delegate the action.

4 Q. Governor Siegelman, in your experience, is

5 always open to an open and vigorous debate

6 amongst members of his cabinet and people

7 within his administration, correct?

8 A. Most of the time, yes, sir.

9 Q. But ultimately, as George Bush says it, he's

10 the decider, right?

11 A. That is correct.

12 Q. All right. Now, in 1999, HealthSouth was a

13 Fortune 500 company, correct?

14 A. I don't know.

15 Q. Had you heard of the term "HealthSouth" in

16 Alabama in 1999?

17 A. Yes, sir. I knew it was a large company. I

18 don't keep up with who's on the Fortune 500.

19 Q. All right. That's fair enough. You knew

20 that HealthSouth was a -- say a

21 multi-billion-dollar company in 1999?

22 A. That's fair.

23 Q. And you knew that they were headquartered

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1 right here in Alabama?

2 A. Yes, sir.

3 Q. And you know that that company was founded

4 and run by a gentleman by the name of Richard

5 Scrushy?

6 A. That's right.

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- 7 Q. And you knew from your experience, or vast
8 experience by this time, in getting in and
9 around Alabama politics that Richard Scrushy
10 was a very powerful and influential man?
11 A. That's correct.
12 Q. And you also knew that HealthSouth and, in
13 particular, Richard Scrushy were folks who
14 were philanthropists?
15 A. That is correct. At least knew his name, not
16 a lot of faces.
17 Q. Exactly. You traveled all over the state
18 during Governor Siegelman's campaign for
19 governor; and you drove on roads named
20 Richard Scrushy; you saw libraries named
21 after him, that sort of thing?
22 A. That's correct.
23 Q. You knew that this gentleman had given tens

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- 1 of millions of dollars to the people of
2 Alabama.
3 A. I don't know how much, but a lot, yes, sir.
4 Q. A lot of money. A lot more money than David
5 McDonald has given?
6 A. I don't know about that either, but a lot.
7 Q. A lot. Or maybe the judge might take
8 judicial notice of that.
9 A. Okay.
10 Q. All right. Now, besides all of that -- well,
11 let me just jump right to the chase. You
12 weren't involved in the health care field in
13 1999?

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14 A. I never have been.

15 Q. Never have been.

16 A. No.

17 Q. Did you, Mr. Bailey, know of anybody in
18 Alabama who was more qualified to serve on
19 the Certificate of Need Board than this man
20 right here, Richard Scrushy?

21 A. I hadn't given it any thought, Mr. McDonald.

22 Q. Hadn't given it any thought. Okay. Well,
23 sitting here today, looking back in time to

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1 1999, does anyone stand out in your memory in
2 Alabama as being more qualified to serve on
3 the Certificate of Need Board than this
4 gentleman here, Mr. Scrushy?

5 A. Again, I don't know what the qualifications
6 are for the CON Board. I'm sure he's very
7 qualified.

8 Q. Okay. You don't know what it takes to get on
9 the CON Board?

10 A. Well, I do know what it takes to get on the
11 CON Board.

12 Q. Well, give the jury some qualifications,
13 because we really haven't had a lot of
14 testimony on what it takes to get on the CON
15 Board.

16 A. Well, one way is to make contributions.

17 Q. They make contributions?

18 A. One way to get on the CON Board is to make
19 contributions.

20 Q. Okay. Okay. And that -- is that your

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4 on this CON Board in Governor Siegelman's
5 administration paid him to be on that CON
6 Board?

7 A. That's not my testimony at all.

8 Q. Okay. Do you know a lady by the name of
9 Margie Sellers?

10 A. I do.

11 Q. Did she pay money to get on that CON Board?

12 A. I'm not aware of it.

13 Q. Is she a qualified member on that CON Board?

14 A. Again, I can't speak to the qualifications
15 what it takes to be on the CON Board or what
16 her qualifications are either.

17 Q. Well, the reason I'm belaboring this point
18 somewhat, Mr. Bailey, didn't you spend hours
19 upon hours in those interviews with the
20 Government talking about meetings that you
21 had with Governor Siegelman about who and who
22 wouldn't be appointed to the CON Board?

23 A. We spent some time discussing that issue,

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1 yes, sir.

2 Q. But you don't know who's qualified to serve
3 on that board today; you just testified to
4 that.

5 A. We weren't discussing qualifications.

6 Q. You never discussed their qualifications?

7 A. That was not the subject of our discussions,
8 no.

9 Q. So if Governor Siegelman made a decision to
10 appoint anybody on that CON Board, you have

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11 no qualification to sit there under oath and
12 say that man or that woman was not qualified
13 to serve on the CON Board?

14 A. I never suggested that.

15 Q. And you never will?

16 A. I won't.

17 Q. Perfect. Mr. Bailey, you were involved
18 actively in Governor Siegelman's race for
19 governor against Fob James, correct?

20 A. That is correct.

21 Q. You knew that Richard Scrushy supported Fob
22 James in that reelection bid?

23 A. I had heard that a lot, yes, sir.

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1 Q. And you knew of that financial support that
2 Richard Scrushy gave to Governor Siegelman
3 during that race?

4 A. That's correct.

5 Q. There was -- let's put it diplomatically.
6 There was certainly no close relationship
7 between Mr. Scrushy and Governor Siegelman in
8 1999 or 1998 when he was -- the Governor was
9 re-running for office?

10 A. That was my understanding from talking to
11 Mr. Hanson.

12 Q. All right. And you had an office -- after
13 the Governor was sworn in, you had an office
14 as the Governor Siegelman's assistant that
15 was on the same floor and not too far away
16 from Governor Siegelman's office?

17 A. That's correct.